

MAR 20 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEAN SULLIVAN,

Plaintiff - Appellant,

v.

COUNTY OF CLACKAMAS; DANIEL  
STEEVES; CITY OF WILSONVILLE;  
FLOYD PEOPLES; CHARLES JACOBY,

Defendants - Appellees.

No. 06-35734

D.C. No. CV-04-01665-JE

MEMORANDUM<sup>\*</sup>

ROBERT FREECE,

Plaintiff - Appellant,

v.

COUNTY OF CLACKAMAS; KIM  
KLUSMANN, DANIEL STEEVES,

Defendants,

and

CITY OF WILSONVILLE; FLOYD  
PEOPLES; CHARLES JACOBY,

Defendants - Appellees.

No. 06-35735

D.C. No. CV-04-01666-JE

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<sup>\*</sup>This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court  
for the District of Oregon  
John Jelderks, Magistrate Judge, Presiding

Argued and Submitted March 2, 2009  
Portland, Oregon

Before: GRABER, FISHER and M. SMITH, Circuit Judges.

Sean Sullivan and Robert Freece appeal from summary judgments dismissing their claims of civil rights violations and false imprisonment against the City of Wilsonville and two city employees. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

The city employees seized Sullivan and Freece by closing the gate at the exit of the park. *See United States v. Drayton*, 536 U.S. 194, 200 (2002). The seizure was not per se unreasonable, so we apply a balancing test. *See United States v. Faulkner*, 450 F.3d 466, 471 (9th Cir. 2006). Balancing the governmental and private interests, the seizure was unreasonable, because “using . . . continued detention to coerce” activity is more intrusive than necessary. *See Ganwich v. Knapp*, 319 F.3d 1115, 1121-22, 1124 (9th Cir. 2003). However, given the brevity of the seizure by the park officials (a total of about 20 minutes as compared to the seizure of the *Ganwich* plaintiffs for almost five hours) and the relatively low level of coercion involved (picking up trash compared to submitting to police

interrogation in *Ganwich*), it would not have been clear to a reasonable park official in the city employees' position that their actions violated the Fourth Amendment. *See Osolinski v. Kane*, 92 F.3d 934, 936 (9th Cir. 1996). For this reason, and because the seizure was not the kind of blockage that is subject to Oregon's legal restrictions on roadblocks absent express authority, the employees are immune under the Oregon Tort Claims Act. *See* Or. Rev. Stat. § 30.265(3)(f).

**AFFIRMED.**